

FCC MAIL SECTION

Before the
Federal Communications Commission
MAR 21 1995
Washington, D.C. 20554

DISCLOSURE COPY
MM Docket No. 95-32

In the Matter of

Amendment of Section 73.202(b), RM-8545
Table of Allotments,
FM Broadcast Stations.
(Parker and Port St. Joe, Florida)

NOTICE OF PROPOSED RULE MAKING

Adopted: March 20, 1995; Released: March 20, 1995

By the Chief, Allocations Branch:

Comment Date: May 11, 1995

Reply Comment Date: May 26, 1995

1. Before the Commission for consideration is a petition for rule making filed by Southern Broadcasting Companies, Inc. ("petitioner"), licensee of Station WPBH(FM), Channel 233C, Port St. Joe, Florida, requesting the reallocation of its channel to Parker, Florida, and the modification of its license accordingly.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of licensee without affording other interested parties an opportunity to file competing expressions of interest. See *Modification of FM License ("Change of Community R&O")*, 4 FCC Rcd 4870 (1989), *recon. granted in part ("Change of Community MO&O")*, 5 FCC Rcd 7094 (1990). In this regard, petitioner advises that the requested reallocation to Parker is mutually exclusive with the present allotment of Channel 233C at Port St. Joe, since no change in transmitter site is contemplated. Petitioner advises that, operating with existing facilities from its present site, Station WPBH(FM) would be able to provide city grade coverage, a 70 dBu signal over the entire community of Parker. Petitioner also states that Port St. Joe (population 4,044)¹ will continue to receive city grade service from Station WPBH(FM), as well as local aural transmission service from Station WMTO(FM). Therefore, Port St. Joe will not be deprived of its sole local aural transmission service. Petitioner contends that Parker (population 4,598) is not located within the Panama City Urbanized Area.

3. In support of its proposal, petitioner states that Parker is an incorporated community, with its own fire chief, police, parks, and street departments. Parker also has its own library and numerous businesses, churches and civic organization.

4. Based on the information before us, we are unable to determine whether petitioner's proposal would result in a preferential arrangement of allotments. However, we believe the proposal warrants consideration since, it would not deprive Port St. Joe of its only local aural transmission service, and its use is mutually exclusive with Parker. We also note that, according to the 1990 U.S. Census, Parker is located within the Urbanized Area of Panama City, Florida. We question whether Parker is deserving of a local service preference, or whether Parker should be credited with all of the aural services licensed to the Panama City Urbanized Area. See *RKO General (KFRC)*, 5 FCC Rcd 3222 (1990) and *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988). Petitioner is also requested to submit additional information regarding the public interest benefits that would accrue from the reallocation of Channel 233C to Parker, Florida, since it proposes no change in its transmitter site.

5. We believe petitioner's proposal warrants consideration. Channel 233C at Port St. Joe could be reallocated to Parker, Florida, since it would provide the community of Parker with its first local aural transmission service. A staff engineering analysis has determined that Channel 233C can be allotted to Parker, Florida, in compliance with the Commission's minimum distance separation requirements with a site restriction of 47.9 Kilometers (29.8 miles) south-east at its presently licensed transmitter site.² In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 233C at Parker.

6. The Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following communities:

City	Channel No.	
	Present	Proposed
Parker, Florida	-	233C
Port St. Joe, Florida	228C2, 233C	228C2

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **May 11, 1995**, and reply comments on or before **May 26, 1995**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

¹ Population figures are taken from the 1990 U.S. Census.

² The Coordinates for Channel 233C at Parker, Florida are

North Latitude 29-49-09 and West Longitude 85-15-34.

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9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
 Chief, Allocations Branch
 Policy and Rules Division
 Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial

comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.